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February 25, 2015

Senator John W. Fonfara, Co-Chair  
Representative Christie Carpino, Co-Chair  
Legislative Program Review and Investigations Committee  
Capitol Building, Room 506  
Hartford, CT 06106

**WRITTEN TESTIMONY IN OPPOSITION TO RAISED BILL 974  
AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE  
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING THE  
USE OF DRONES BY LAW ENFORCEMENT OFFICERS AND OTHER STATE  
EMPLOYEES.**

Dear Senator Fonfara, Representative Carpino and Committee Members:

The CCDLA is a not-for-profit organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, the CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, the CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

The CCDLA commends the Program Review and Investigations Committee for its comprehensive study pertaining to the regulation of drones and supports the recommended registration and reporting requirements for drone use by law enforcement. However, the CCDLA joins the Office of the Chief Public Defender in opposing Subsection (c) (3) of Section 3 of Raised Bill No. 974. This section pertains to drone usage by law enforcement and the procedures for the retention, modification, and destruction of information obtained from the use of drones by law enforcement. In particular, Subsection (c) (3) would allow law enforcement to conduct searches without the constitutionally required finding of probable cause. Instead it provides that law enforcement would be able to conduct any search based solely upon a belief of a reasonable and articulable suspicion that a crime has been or is being committed. In its current form, this section establishes a dangerous and unrecognized exception to the warrant requirement for searches of an individual's home or property. As this committee is aware, even small bird size drones have exceptionally invasive capabilities with cameras and audio equipment that can easily be used to search and record activities within a private dwelling. In view of the extremely

intrusive capabilities of drones, the CCDLA joins with the Office of the Chief Public Defender to urge this legislature to follow the majority of states that have considered this issue by requiring that a warrant, supported by probable cause and signed by a neutral judge, be obtained for all non-emergency drone usage by law enforcement.

**Raised Bill No. 974, An Act Concerning the Use of Drones by Law Enforcement Agencies and Other State Employees**, includes various recommendations pertaining to the regulation of drones. The CCDLA primarily is concerned with the language of Subsection (c) (3) of Section 3, which provides:

A law enforcement officer shall not operate an unmanned aerial vehicle in a manner to collect information about an individual or privately owned property unless....

(3) there is a reasonable and articulable suspicion that an offense has been or is being committed by such individual or on such property and the operation of the unmanned aerial vehicle is limited to a total of twenty-four hours within a thirty-day period.

Allowing for searches only upon a belief of reasonable and articulable suspicion creates an unrecognized exception to the warrant requirement for searches of an individual's home or property. Typically, searches without a warrant are permitted only for three reasons: 1) exigent circumstances; 2) to conduct protective sweeps; and 3) in the case of emergencies. All three of these exceptions recognize situations in which swift police action is necessary.

The exigent circumstance exception generally refers to those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search or seizure, for which probable cause exists, unless they act swiftly and, without seeking prior judicial authorization, those that present a risk of danger to human life; the destruction of evidence; or the flight of a suspect. The purpose of the protective sweep doctrine is to allow police officers to take steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack. The emergency doctrine is rooted in the caretaking function of the police. The purpose of the emergency doctrine is to allow the police to make a warrantless entry to render emergency aid and assistance to a person whose life or limb is in immediate jeopardy.

In all other circumstances, law enforcement *must* obtain a warrant signed by a neutral magistrate. The reasonable and articulable suspicion standard is more commonly used to detain individuals on the street when police believe a crime has been or is being committed, and is generally limited to frisking for weapons to ensure officer safety and to quickly eliminate suspects. Applying this low standard to searches of an individual's home and property would drastically reduce, if not

eliminate, our protections against unreasonable searches and seizures in violation of the Fourth Amendment to the Constitution of the United States.

We must carefully and jealously safeguard the sanctity of the home especially because drones or Unmanned Aerial Vehicles (UAVs) are capable of highly advanced and near-constant surveillance through live-feed video cameras, thermal imaging, communications intercept capabilities, and backend software tools such as license plate recognition, GPS tracking, and facial recognition. They are also extremely small in comparison to other methods of aerial surveillance, such as a camera outfitted on a helicopter. These technologies allow a drone to be used to reach into private areas that were, until now, inaccessible to the public or law enforcement. Thus, the use of drones by law enforcement must comport with the provisions of the Fourth Amendment which prohibits the government from invading and searching any location where we have a reasonable expectation of privacy unless the search is conducted pursuant to a search warrant issued by a neutral judge in accordance with the location and time specified in the warrant.

The majority of states that have passed legislation pertaining to drone use by law enforcement have determined that individual privacy rights must not be degraded by virtue of technological advances. Alaska, Florida, Idaho, Illinois, Indiana, Iowa, Montana, North Carolina, Oregon, Tennessee, Utah, Virginia and Wisconsin all require warrants or the existence of an exception to the warrant requirement. Texas permits the use of a drone with reasonable suspicion, but only in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed a felony.

In conclusion, Connecticut's proposal to permit the use of drones for reasonable suspicion without any attendant exigent circumstances would be an outlier. The CCDLA urges this legislature to modify the language of Raised Bill No. 974, Section 3, Subsection (c)(3) to require a warrant for drone use by law enforcement except in emergency situations.

For all the reasons stated above, the CCDLA opposes Raised Bill No. 974.

Respectfully submitted,

Elisa L. Villa  
President  
CCDLA